



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R4-OAR-2022-0225; FRL-9912-02-R4]

#### Air Plan Approval; Kentucky; Removal of Excess Emissions Provisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Kentucky Energy and Environment Cabinet (Cabinet), on November 17, 2016, on behalf of the Commonwealth of Kentucky (Commonwealth). The revision was submitted in response to the EPA's SIP call published on June 12, 2015, concerning excess emissions during startup, shutdown, and malfunction (SSM) events. The submittal requests the revision of provisions identified in the 2015 SIP call for the Kentucky SIP. EPA is approving the SIP revision and finds that such SIP revision corrects the deficiencies identified in the June 12, 2015, SIP call.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R4-OAR-2022-0225. All documents in the docket are listed on the [www.regulations.gov](https://www.regulations.gov) web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](https://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia

30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Estelle Bae, Air Permitting Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Bae can be reached by telephone at (404) 562-9143 or via electronic mail at [bae.estelle@epa.gov](mailto:bae.estelle@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On June 7, 2022, EPA proposed to approve a SIP revision submitted by the Commonwealth through the Cabinet on November 17, 2016. *See* 87 FR 34612. In that proposal, EPA also proposed to determine that the SIP revision corrects the deficiency with respect to Kentucky that the Agency identified in the June 12, 2015, action titled "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction," 80 FR 33839 (June 12, 2015), hereinafter referred to as the "2015 SSM SIP Action." The reasons for the proposed approval and determination are stated in the June 7, 2022, proposed action and will not be restated here. The public comment period for EPA's proposed approval and determination ended on July 7, 2022, and EPA received one comment in support of the proposal, which is available in the docket for this action. Therefore, EPA is finalizing the action as proposed.

### **II. Final Action**

EPA is approving the Commonwealth's November 17, 2016, SIP submission requesting removal of 401 KAR 50:055 section 1(1) and section 1(4) from the Kentucky SIP. EPA has

determined that this SIP revision is consistent with the requirements for SIP provisions under the CAA. EPA has also determined that this SIP revision corrects the deficiencies identified in the 2015 SSM SIP Action with respect to the Kentucky SIP.

### **III. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes incorporation by reference. EPA is finalizing the removal of specific provisions of 401 KAR 50:055, *General Compliance Requirements*, as discussed in Sections I and II of this preamble. Specifically, EPA is removing 401 KAR 50:055 section 1(1) and section 1(4) from the Kentucky SIP, which are incorporated by reference in accordance with requirements of 1 CFR 51.5. EPA has made, and will continue to make, the SIP generally available at the EPA Region 4 Office (please contact the person identified in the FOR FURTHER INFORMATION CONTACT section of this preamble for more information).

### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 3, 2022.

**Daniel Blackman,**  
*Regional Administrator,*  
*Region 4.*

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart S - Kentucky**

2. In § 52.920(c), amend Table 1 by revising the entry for “401 KAR 50:055” to read as follows:

#### **§ 52.920 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

Table 1 - EPA-Approved Kentucky Regulations

<b>State citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Explanation</b>
**	**	*	*	*
401 KAR 50:055	General compliance requirements	9/22/1982	05/04/89, 54 FR 19169	Except for Sections 1(1) and 1(4), which were removed from the SIP by EPA on [Insert date of publication in Federal Register]
**	**	*	*	*

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[FR Doc. 2022-17025 Filed: 8/10/2022 8:45 am; Publication Date: 8/11/2022]